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THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1610

RICHARD H. OLSEN,
Petitioner

v.

SAUL GOODMAN,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered on the 7th day of November, 1974, and an order denying a petition for rehearing entered on January 29, 1975.

OPINIONS BELOW

The Final Judgment of the Circuit Court of Dade County, Florida, dated March 17, 1972, was not reported, but is printed

at Appendix A hereto.

The Order of the District Court of Appeal, Third District, dated November 17, 1972, dismissing the Appeal, is reported in 269 So.2d 782, and is printed at Appendix B hereto.

The Opinion of the Supreme Court of Florida, dated May 9, 1973, reversing the District Court of Appeal and reinstating the Appeal is reported in 278 So.2d 612, and is printed at Appendix C hereto.

The Opinion of the District Court of Appeal, Third District, dates March 12, 1974, affirming the final judgment of the Circuit Court of Dade County, *per curiam*, is reported in 291 So.2d 71 and is printed at Appendix D hereto.

The Opinion of the Supreme Court of Florida, dated November 7, 1974, reversing the District Court of Appeal, is reported in 305 So.2d 753, and is printed at Appendix E hereto.

The Order of the Supreme Court of Florida, dated January 29, 1975, denying a rehearing, is not reported, but is printed at Appendix F hereto.

JURISDICTION

The Judgment of the Supreme Court of Florida was entered on November 7, 1974. A petition for rehearing was denied on January 29, 1975. An Order Extending Time To File Petition For Writ of Certiorari to and including June 27, 1975, was entered on April 12, 1975.

Jurisdiction of this Court is invoked under Title 28, United States Code, Section 2101(c).

THE QUESTIONS PRESENTED

1. Does the decision of the Supreme Court of Florida, conferring upon itself jurisdiction in this cause, under Article V, Section 3(b)(3) of the Constitution of the State of Florida, where no such jurisdiction existed, conflict with the Fourteenth Amendment to the Constitution of the United States by denying Petitioner due process of law?

2. Does the decision of the Supreme Court of Florida

denying the standing of the Petitioner by its reversal of a jury verdict in favor of Petitioner, and the affirmance of said jury verdict by the *per curiam* decision of the District Court of Appeal of the State:

(a) Conflict with Articles One and Four of the Constitution of the United States by the Court's failure to give full faith and credit to the Laws of New York governing contracts, which laws were applicable in this cause?
(b) Conflict with the Seventh Amendment to the Constitution of the United States, which Amendment was adopted in full by Article One, Section Two of the Bill of Rights of the Constitution of the State of New York by denying Petitioner the right to trial by jury on the issue of usury?
(c) Conflict with the Fourteenth Amendment to the Constitution of the United States by the Court's refusal to give effect to a substantive defense, arising under contract, which defense is valid in the state wherein the contract was made and was performed?

STATEMENT

I. NATURE OF CASE:

This Petition grows out of an appeal to the Florida Supreme Court from the District Court of Appeal, Third District, reversing that Courts *per curiam* affirmance of the jury verdict in favor of the Petitioner rendered in the Circuit Court of Dade County, Florida.

II. PERSONS INVOLVED:

THE PETITIONER: Richard H. Olsen is a member of the Florida Bar having been admitted in 1957, and an investor.

THE RESPONDENT: Saul Goodman is a retired banker of forty years experience having been the Vice Chairman of the Board and Executive Vice President of the Gary Trust and Savings Bank of Gary, Indiana.

III. THIS CASE:

This cause involved an action at law on a contract dated September 17, 1968. Under the terms of the contract, Olsen, the defendant below and the Petitioner herein, was borrowing $150,000 to purchase 25,000 shares of the capital stock of Omega Equities Corporation. Goodman, the plaintiff below and the Respondent herein, was lending Olsen the money and depositing with him an additional $150,000 for the purchase of the same amount of stock for his personal account.

The contract between the parties provided the loan to Olsen would be repaid in eight (8) months and thirteen (13) days. It further provided that Goodman, the lender, as a consideration of the loan, had the right to demand that Olsen, the borrower, repurchase Goodman's stock at a profit of $100,000.

In addition to Goodman and Olsen, there were other individuals purchasing stock in Omega who had given their money to Olsen, as a trustee, for their purchases.

At the trial, it was disclosed that Olsen received a check payable to Richard H. Olsen, Trustee, from Goodman for $300,000. The check was endorsed in the presence of Goodman, by Olsen as Trustee, payable to Omega Equities Corporation for deposit only and subsequently delivered to Omega, in New York with the combined funds of the other investors, for the purchase of the stock.

The day following the delivery of the funds to Omega and prior to the Goodman check clearing collection at his bank, Goodman called Olsen, who had returned to Florida, and advised him that he had stopped payment on the $300,000 check. Goodman demanded a payment of $25,000 before he would permit the check to be cleared. Olsen, to protect the funds of the other investors, negotiated the sum down to $10,000 and wired, by Western Union, Goodman the funds whereupon Goodman permitted his check to clear collection.

The written contract was prepared, signed and executed in the State of New York and there was no indication that performance would occur any place other than New York.

After maturity of the note, Olsen paid $50,000 of the $150,000 as demanded by Goodman but when he failed to

make a further payment, Goodman filed a lawsuit in the Circuit Court of Dade County, Florida. The first count of the lawsuit demanded the repayment of the $150,000 loaned and the second count sought damages for Olsen's alleged failure to buy back the stock from Goodman at the guaranteed price giving Goodman a profit of $100,000.

The principal defense interposed by Olsen to the lawsuit was that the contract was usurious under the applicable laws of the State of New York and, therefore, unenforceable. Goodman, in his Amended Answer, admitted the transaction occurred in New York and that the New York law should apply.

The case, after two days of trial before a jury, with the application of the laws of New York, resulted in a verdict for Olsen followed by a judgment thereon.

Goodman entered an appeal to the Third District Court of Appeal in Florida but failed to file a brief within the time prescribed by the Florida Rules of Appellate Procedure. Olsen filed his brief and two weeks later filed a motion to dismiss the appeal. At a hearing on the motion to dismiss, the motion was granted and the appeal dismissed.

Goodman then petitioned the Supreme Court of Florida for a writ of certiorari which writ was subsequently granted. A panel of the Supreme Court reinstated the appeal and remanded the cause to the District Court to be heard on its merits. The District Court of Appeal issued a *per curiam* affirmance of the jury verdict in favor of Olsen.

Subsequently, Goodman again sought a writ of certiorari from the Supreme Court on a claim of conflict of jurisdiction pursuant to Article 5, Section 3(b)(3) of the Constitution of the State of Florida. The conflict claimed was between the *per curiam* holding of the District Court of Appeal and the opinion in the *State of Florida, ex rel., the Florida Bar v. Delves*, 160 So.2d 114, and the *Florida Bar v. Pitts*, 219 So.2d 427, which cases are concerned entirely with an interpretation of the integration rules of the Florida Bar and not with the usury law of the State of New York.

A panel of the Supreme Court, with a dissenting opinion, granted certiorari on a conditional basis and subsequently reversed the District Court of Appeal. The Judgment of reversal

remanded the cause to the Circuit Court of Dade County for re-trial with directions prohibiting the interposition of the defense of usury.

A petition for rehearing was filed by Olsen. The Petition, in part, set forth the lack of jurisdiction of the Supreme Court to grant the writ of certiorari where no conflict existed with annexed hereto as Petitioner's Exhibit No. 3. The Petition, in part, set forth the lack of jurisdiction of the Supreme Court to grant the writ of certiorari where no conflict existed with respect to the laws of New York to give them jurisdiction. The Petition further set forth the denial of due process of law to Olsen by the prohibition of the use of the defense of usury and a jury trial as guaranteed by the Constitution of the State of New York. The Petition was denied on the 29th of January, 1975.

On April 10, 1975, Olsen filed a Motion for Extension of Time Within Which to File Petition for Writ of Certiorari to this Court. As grounds for the Motion, Olsen cited the impeachment proceedings being conducted by the House Select Committee on Impeachment, investigating three of the Florida Supreme Court Justices, all of whom had participated on the panels adjudicating the two Goodman-Olsen appeals. This Court granted the extension through June 27, 1975.

During the course of the impeachment hearings, Justice Dekel resigned from the Court and the Committee then concentrated its investigation on Justice McCain. It was Justice McCain who became the lead Justice in both Goodman appeals. Testimony and exhibits of record indicated irregularities in the Goodman-Olsen appeals. The confidential files of the Court revealed that, in the first Goodman appeal, case #43,168, it was initially assigned to Justice Ervin, who was to be the lead Justice in the case. A jurisdictional memorandum in the file recommended a denial of jurisdiction, but it had been crossed out. A second jurisdictional memorandum on reassignment, edited by Justice McCain, was next in the file and it recommended granting the writ without oral argument. Cases are normally assigned Justices on a blind selection basis. The second Goodman appeal, case #45,356, again had Justice McCain being the lead Justice. Prior to the Committee completing further investigation in this matter, Justice McCain

resigned from the Court, thus concluding the Committee's investigative power. The third Justice under investigation, Justice Boyd, rather than being impeached was referred to the Judicial Qualifications Commission for a mental examination and for determination of his capacity to continue on the Court. There is printed as appendices G, H and I the affidavit of the Staff Director of the Committee on Judiciary of the Florida House of Representatives and the confidential files of the Florida Supreme Court relating to the Goodman-Olsen appeals.

REASONS FOR GRANTING WRIT

As to question one, the Constitution of the State of Florida, as amended, Article V, Section 3(b)(3) provides that the Supreme Court:

> "(3) may review by certiorari any decision of a District Court of Appeal that affects a class of Constitutional or State Officers, that passes upon a question certified by a District Court of Appeal to be of great public interest, or that is in direct conflict with a decision of any District Court of Appeal or of the Supreme Court *on the same question of law*, and any interlocutory order passing upon a matter, which upon final judgment would be directly appealable to the Supreme Court; and may issue Writs of Certiorari to Commissions established by general law having statewide jurisdiction." (Emphasis supplied)

The Appellant below (Goodman) sought to have the Florida Supreme Court take jurisdiction of his petition for certiorari on the grounds of conflict. It is obvious then, from Article V, Section 3(b)(3) of the Florida Constitution that the Court must find a conflict *on the same question of law* which was enunciated by the *per curiam* decision of the District Court of Appeal, Third District, and the cases cited in Appellant's petition and brief.

The Florida Supreme Court has set forth, in numerous cases, what constitutes a conflict. In the case of *Nielsen v. City of Sarasota*, 117 So.2d 731 at 734, 735 (1960), said Court defined its limitation of Jurisdiction in stating:

> "Under Article V, Florida Constitution, as amended

effective July 1, 1957.[1] *the power of this Court to issue writs of certiorari was substantially restricted and drastically circumscribed.* While the Courts of Appeal and the Circuit Courts were endowed with unlimited authority to issue writs of certiorari within the orbit of their own jurisdiction, *the power of this Court to issue such writs, although unlimited prior to the amendment was subjected to substantial constitutional restraints when the amendment was adopted.* The so-called 'conflict jurisdiction' was not conveyed to the Supreme Court merely to convert it into a 'court of selected errors' whereby the Justices of this Court could whimsically select cases for review in order to satisfy some notion that the case would be of such importance as to justify the interest or attention of this Court.

"On the contrary, *in order to sanctify the decisions of the Courts of Appeal with an aspect of finality*, so essential to prevent any imbalance in the several echelons of the appellate process, the jurisdiction of this Court to exercise certiorari powers and to set aside the decisions of the Courts of Appeal on the conflict theory was expressly limited by the Constitution itself. *Ansin v. Thurston*, Fla, 101 So.2d 808.

"When our jurisdiction is invoked pursuant to this provision of the Constitution, we are not permitted the judicial luxury of upsetting a decision of a Court of Appeal merely because we might personally disagree with the so-called 'justice of the case' as announced by the Court below. In order to assert our power to set aside the decision of a Court of Appeal on the conflict theory *we must find in that decision a real, live and vital conflict within the limits above mentioned.*" (Emphasis supplied)

In the case of *Kyle* v. *Kyle*, 139 So.2d 885 at 887 (1962), the Florida Supreme Court said:

"The test of our jurisdiction in such situations is not measured simply by our view regarding the correctness of the Court of Appeal decision. On the contrary, jurisdiction to review

[1] Article V, Florida Constitution was further amended in 1972. No change regarding conflict certiorari was made except to permit the Supreme Court to grant a writ where an opinion of a District Court of Appeal was in conflict with a prior opinion rendered by that District Court.

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> because of an alleged conflict requires a preliminary determination as to whether the Court of Appeal has announced a decision on a point of law which, if permitted to stand, would be out of harmony with a prior decision of this Court or another Court of Appeal on the same point, thereby generating confusion and instability among the precedents. *We have said that conflict must be of such that if the later decision and the earlier decision were rendered by the same Court the former would have the effect of overruling the latter.*" (Emphasis supplied)

The Appellant below, in his petition and supporting brief for certiorari relied upon two cases: *State of Florida, ex rel. the Florida Bar v. Delves*, 160 So.2d 114 (1964) and *Florida Bar v. Pitts*, 219 So.2d 427 (1969), to support his contention that a conflict existed between the *per curiam* decision of the District Court of Appeal and the cited decisions of the Supreme Court of Florida.

The *Delves* and *Pitts* cases, *supra*, are wholly and completely involved with the construction and the interpretation of the Integration Rules of the Florida Bar Association. Neither case has the remotest relationship to, nor is it similar with the factual issues or the law presented in the case *sub judice*. Both cited cases involved disciplinary proceedings, initiated through the filing of a grievance with the Florida Bar Association, which grievance was governed by the Integration Rules of that Association. Those cases, being interpretations of quasi criminal administrative regulations, are not applicable in an action at law governed by the Statutes of a sister state.

In the case *sub judice*, the litigants agreed the laws of the State of New York were applicable. This was confirmed by the Trial Court, confirmed by the District Court of Appeal and further confirmed by the Panel of the Supreme Court of Florida in its Opinion rendered November 7, 1974.

It is obvious that decisions rendered by the Florida Supreme Court in matters involving disciplinary proceedings under the administrative regulations of the Integration Rules of the Florida Bar Association cannot be used to establish a "conflict" as required by Article V, Section 3(b)(3) of the Constitution of the State of Florida in an action at law under the laws of the State of New York.

The cited cases of *Delves* and *Pitts*, *supra*, have no application whatsoever, to the law in the matter tried below. No conflict of any kind exists between the *per curiam* Order of the District Court of Appeal and the cases relied upon by the Appellant below. The Panel of the Florida Supreme Court, therefore, lacked the power to confer upon itself jurisdiction in this case under the provisions of Article V, Section 3(b)(3) of the Constitution of the State of Florida. The exercise of such illegally assumed jurisdiction by said Court has denied Petitioner equal protection and due process of law as guaranteed him by the Fourteenth Amendment to the Constitution of the United States.

As to question number two, the law of the state where the contract was made will generally be applied in the forum to the exclusion of the law of the forum. This is especially so when the law of the place of contracting is asserted as a defense to an action brought in another forum.

In the case of *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145 at 160 (1932), this Court, with respect to the enforcement of a right conferred by a statute of another state, drew a distinction between a case where the right asserted is sought to be affirmatively enforced and a case where the right asserted is pleaded as a defense. The case involved an action for death by wrongful act brought in New Hampshire. By way of affirmative defense, the defendant pleaded that the remedy sought was not provided for by the terms of the Vermont Workmen's Compensation Statute.

The plaintiff contended that the provisions of the Vermont Workmen's Compensation Statute which forbade resort to common-law remedies was contrary to the public policy of New Hampshire, where the action was instituted, because the New Hampshire statute allowed an election of remedies, and that, accordingly, the full faith and credit clause did not require New Hampshire Courts to enforce a statute of another state which was obnoxious to its public policy. In sustaining the defense of the employer that the rights of the employee were confined to those prescribed by the Vermont statute, the Court said:

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"It is true that the full faith and credit clause does not require the enforcement of every right conferred by a statute of another state. There is room for some play of conflicting policies. Thus, a *plaintiff* suing in New Hampshire on a statutory cause of action arising in Vermont might be denied relief because the forum fails to provide a court with jurisdiction of the controversy ... or because it fails to provide procedure appropriate to its determination ... or because the enforcement of the right conferred would be obnoxious to the public policy of the forum ... But the *company* (the employer) *is in a position different from that of a plaintiff who seeks to enforce a cause of action conferred by the laws of another state*. The right which it claims should be given effect is set up by way of defense to an asserted liability; and *to a defense different considerations apply*. ... A state may, on occasion, decline to enforce a foreign cause of action. In so doing it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But *to refuse to give effect to a substantive defense under the applicable laws of another state*, as under the circumstances here presented, *subjects the defendant to irremediable liability. This may not be done.*" (Emphasis supplied)

The rationale of the *Bradford* case, *supra*, was followed in the case of *Holderness, et al., v. Hamilton Fire Ins. Co. of New York*, S.D.Fla., 54 F.Supp. 145 (1944). Plaintiffs, citizens of North Carolina, sued on an insurance policy issued by a New York corporation covering a building in North Carolina. The contract was neither executed nor delivered in Florida, nor was it performed there. The action being transitory, was commenced in a Florida state court and subsequently removed to the Federal District Court. The suit was instituted more than twelve months after the fire. Defendant asserted the suit was barred by a contract provision that no action thereon shall be sustainable in any court unless commenced within twelve months next after the fire. Plaintiff replied that in Florida this provision is contrary to public policy and therefore unenforceable. The Court, in finding for the defendant said:

"A state can not extend the effect of its laws beyond its

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own borders so as to destroy or impair contract rights not operative within its own jurisdiction, and valid where made. *When defensively asserted, foreign contract rights must be recognized by the local forum even though contrary to local public policy, if such rights are valid, and performance is to be had, where the contract was executed.* To decline to recognize such rights for defensive purposes in the local forum effectively deprives the party of a right valid where made and to be performed. *If he can not assert it is a defense, the right is wholly lost to him. Thus the contract obligation, valid where made and to be performed, is impaired, contrary to Art. 1, Sec. 10, of the Federal Constitution. Due Process and full faith and credit in its enforcement are denied, contrary to Sec. 1 of the 14th Amdt, and Art. 4, Sec 1, of the Constitution.*" (Emphasis supplied)

See also *Hartford Accident & Indemnity Co., v. Delta & Pine Land Co.*, 202 U.S. 143 (1934); *Home Insurance Company v. Dick*, 281 U.S. 397 (1930); and *John Hancock Mutual Insurance Company v. Yates*, 299 U.S. 178 (1936).

The panel of the Supreme Court of Florida, in reversing the *per curiam* affirmance by the District Court of Appeal, of a jury verdict in favor of the Appellant herein, chose to totally disregard the application of New York law and, in fact, took a position contrary to the position established in the Florida case of *Confederation Life Association v. Ugalde*, 151 So.2d 315 at 318 (1963), where the Court said:

"When a suit is brought on a contract in a jurisdiction other than the one which governs the rights and obligations thereunder, a *defense lawfully vested under the law of the latter jurisdiction may not be ignored by the forum* if that state had no significant connection with the contract obligations. *Rejection of such rights under the contract, asserted as a defense, is a deprivation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States* and Section 12 of the Declaration of Rights of Florida, F.S.A., *Home Ins. Co. v. Dick*, 281 U.S. 307, 50 S.Ct.338, 74 L.Ed. 926, 74 A.L.R. 701 (1930); *Hartford Accident & Indemnity Co., v. Delta Pine & Land Co.*, 292 U.S. 143, 54 S.Ct. 634 78 L.Ed. 1178, 92 A.L.R. 928 (1934); *Holderness v.*

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Hamilton Fire Ins. Co. of New York, S.D.Fla. 1944, 54 F.Supp. 145 . . ." (Emphasis supplied)

Thus, the failure of the Florida Supreme Court to allow an asserted defense, valid in the state where the contract was made and performed, to be utilized in the Courts of the State of Florida, flies in the face of all established precedents of the Courts of the United States, the State of New York and the State of Florida itself.

The State of New York has adopted the Seventh Amendment to the Constitution of the United States[2] as its law regarding the right to trial by jury.

> "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provisions shall remain inviolate forever; . . ." *Article I, Bill of Rights, Section 2, Constitution of the State of New York.*

This premise is further defined in the case of *Edward F. Fedoryszyn, v. Leonard Weiss and Fedoryszyn Associates*, 310 N.Y.S.2d 55, at 58, (1970), 62 Misc.2d 889, where, in a stockholders derivative action the Court said:

> "The existence in the complaint of a request for equitable relief does not destroy the right to a trial by jury where judgment for a sum of money is sought (*Vinlis Construction Co., Inc., et al. v. Roreck*, 23 A.D.2d 895, 260 N.Y.S.2d 345). *The right to a jury trial preserved by Amendment Seven to the United States Constitution is guaranteed by our State's Constitution. (Article I, Section 2).*" (Emphasis supplied)

In *McKinney's Consolidated Laws of New York – Civil Practice Law & Rules*, Volume 7B, Rule 4101, providing for trial by jury, states:

> "In the following actions, the issues of fact shall be tried by a jury unless a jury trial is waived . . .
> 1. an action in which a party demands and sets forth facts

[2]"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." *Constitution of the United States, Seventh Amendment.*

which would permit a judgment for a sum of money only: . . ."

See also *Ruth H. Davis, as Executrix of the Estate of Lucy H. Mackey, Deceased v. Prudential Insurance Company of America*, 297 N.Y.S.2d 261 (1969) 31 A.D.2d 865; and *Schenck v. Prudential Ins. Co.*, 3 N.Y.S.2d 856 (1938), 167 Misc. 282, where the Court said that the right to a jury trial is a substantial constitutional right not within the discretion of the judge.

This Court, in the case of *Beacon Theatres, Inc. v. Hon. Harry C. Westover*, 359 US at 501 (1958), granted certiorari because, as it stated:

> "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that *any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care. Dimick v. Schiedt*, 293 US 474, 486; 79 L.Ed 603, 611, 55 S.Ct. 296, 95 ALR 1150, 36 NCCA 184." (Emphasis supplied)

Inherent in the principle of law laid down by this Court in *Bradford Electric, supra*, is the rationale that protects a citizen from deprivation of his right of defense when a party brings an action against him in a state where the citizen's protection, under a contract, may not exist. The law is clear on this point and has been universally followed by the Federal Courts, The Florida Courts and the Courts of New York.

The factual situation in the case *sub judice*, aptly demonstrates the rationale of *Bradford Electric, supra.* There is a contract. There is no dispute that the contract was drafted, executed and performed in the State of New York. There was an action for enforcement of the contract brought in the State of Florida, which if successful, would result in a judgment for money only, and, there was asserted an affirmative defense in the action, which defense is valid under the laws of the State of New York. There could be no clearer picture of the facts and the law, as hereinbefore set forth, to illustrate to this Court the error committed by the Florida Supreme Court thereby denying the Petitioner equal protection and due process of law

guaranteed him under the Constitution of the United States.

The Panel of the Florida Supreme Court went even further in this case. Not only did the Court deprive the Petitioner of his Constitutional rights to assert a defense on the contract, but it conferred upon itself jurisdiction in circumstances where its jurisdiction was prohibited under Article V, Section 3(b)(3) of the Florida Constitution.

The attention of the Court is directed to the fact that the law applicable in the case *sub judice*, is the law of contracts governed by the Statutes of New York. This is the law in the Court below. That this is the law is not now, nor ever has it been in dispute. Irrespective of this fact, the Appellant below founded his claim of conflict on the cases of *Delves* and *Pitts*, *supra*, which cases construe the Integration Rule of the Florida Bar Association. These are administrative regulations which govern disciplinary proceedings, *quasi*-criminal in nature, having a right of appeal to the Florida Supreme Court. They are regulations which are relevant only to Florida proceedings. How then, can the Florida Supreme Court compare these administrative regulations to the Statutes of New York? The answer is obvious, they cannot and that, therefore, no conflict exists. The case *sub judice* is governed by statutory laws passed by the legislature of New York, not by Integration Regulations propounded by the Florida Supreme Court. To permit the Florida Supreme Court to place the Integration Regulations of the Florida Bar Association on a par with the Statutes of the State of New York in an effort to obtain jurisdiction in this cause is to make a mockery of the Constitution of the United States and the statutes of the State of New York.

Equally as important as the law and the facts set forth herein is consideration by this Court of the atmosphere surrounding certain members of the Florida Supreme Court. As a result of impeachment proceedings by the Select Committee on Impeachment of the House of Representatives of the State of Florida, and the testimony and exhibits developed at the hearings, two of the Justices who sat in determination of the cases below resigned from the Court and a third Justice was referred to the Judicial Qualifications Commission for a mental examination to determine his competency to continue on the Court.

Sworn testimony taken at the impeachment hearings, which hearings were subsequent to the final determination of this case, showed serious irregularities on the part of Justices concerned with this case (Appendix G, H, and I). Further investigations were being made as to such irregularities but resignations of the concerned Justices terminated the investigation and the Petitioner is left with circumstantial evidence as to irregularities occurring in the instant case.

It is neither a pleasant nor an easy task to challenge the motives and integrity of certain members of the Florida Supreme Court. However, a combination of events in the instant proceeding compels, reluctantly, the raising of these questions. Examination of that Court's actions in conferring upon itself jurisdiction where jurisdiction should have been declined; of the Court's failure to apply the established law to the facts of the case; and of the revelation of irregularities of proceedings in this cause adduced from testimony at the impeachment hearings: all point to the single conclusion that the Petitioner has been denied a fair and impartial hearing on appeal and has thus been denied his rights under the Constitution of the United States.

CONCLUSION

To summarize, the Court now has for consideration a case in which the Florida Supreme Court seized jurisdiction in a situation where it was powerless to grant certiorari under Article V, Section 3(b)(3) of the Constitution of the State of Florida, as amended.

Having erroneously granted itself power of review, the Court then, while proclaiming that the case was governed by the law of the State of New York, failed to give full faith and credit to the laws of that State by substituting itself for the jury below as the trier of facts and by denying the Petitioner the right to assert, as an affirmative defense, the defense of usury, rights guaranteed to the Petitioner under the New York law.

In so doing, the Florida Supreme Court has violated Petitioners rights under Articles One and Four of the Constitution of the United States and under Amendments Seven and Fourteen of said Constitution. For such reason, we respectfully

urge that this Court grant certiorari.

Respectfully submitted,

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